

VEECH, Richard L.
Appl. No. 10/763,393
June 17, 2008

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REMARKS

Reconsideration of this application is requested. Claims 32-33 are in the case.

I. PRIORITY

The Action asserts that the amendments to the first line of the specification do not correctly identify the intervening application numbers to establish continuity of the priority claim. In response, the amendments to the first line of the specification have been amended to correctly identify the intervening application numbers. In addition, a Petition to Accept an Unintentionally Delayed Benefit Claim under 35 U.S.C. §119(e), 120, 121 and 365(c), and an amended Application Data Sheet, are submitted herewith.

In summary, the present application is a continuation of Application Serial No. 10/408,667, filed April 8, 2003 (Attorney Docket 604-684), abandoned, which is a continuation of Application Serial No. 10/153,873, filed May 24, 2002 (Attorney Docket 604-641), abandoned, which is a continuation of Application Serial No. 09/843,694, filed April 30, 2001 (Attorney Docket 604-591), abandoned, which is a continuation of Application Serial No. 09/397,100, filed September 16, 1999 (Attorney Docket 604-514), now U.S. Patent 6,323,237, which is a continuation of PCT International Application No. PCT/US98/05072, filed March 17, 1998 (Attorney Docket 604-438), which claimed priority from Provisional Application Serial No. 60/040,858, filed March 17, 1997. All continuation cases were filed prior to abandonment or issuance of the parent case. Based on the above, the claimed invention of the present application is entitled to benefit of the subject matter disclosed in Provisional Application Serial No. 60/040,858, filed March 17, 1997. Entry of the amendment to the specification and the Application Data Sheet submitted herewith are accordingly respectfully requested.

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II. SPECIFICATION

The amendment previously submitted is alleged to contain new matter. In response, and without conceding to this position, the language referring to incorporation by reference has been deleted.

III. THE ANTICIPATION REJECTIONS

Claims 32 and 33 stand rejected under 35 U.S.C. §102(a) and (e) as allegedly anticipated by U.S. Patent 6,380, 244 to Martin et al. Claims 32 and 33 also stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent 6,207,856 to Veech. Those rejections are respectfully traversed.

The subject matter of claims 32 and 33 finds support both in Provisional Application Serial No. 60/040,858 and International Application Serial No. PCT/US98/05072. Basis appears in the provisional application as set forth below.

Page 6, lines 1 to 5 discloses that:

'changes in memory function in the normal aged are also accompanied by a decreased glucose tolerance signifying an inability to metabolize glucose'.

Page 11, lines 19 to 24 discloses that:

'Either oral or parenteral administration of free fatty acids or triglycerides can increase blood ketones..... Substitution of lard for corn oil raised blood ketones to almost 5mM (Veech unpublished).'

Page 13, lines 1 to 3 discloses that:

'In general the levels of ketone bodies achieved on (...ketogenic lipid diet...) are about 2mM D-β-hydroxybutyrate and 1mM acetoacetate while the levels of free fatty acids about 1mM'

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Which should be read in conjunction with page 24, lines 1 to 2:

'...it will be appropriate to prevent development of memory loss and/or other neurological dysfunction by elevation of the total sum of the concentrations of the ketone bodies D- β -hydroxybutyrate and 1mM acetoacetate in the patients blood or plasma to between 1.5 and 10mM'.

Page 24, lines 12 to 16 discloses that:

'A still further aspect of the invention provides the ketone bodies of the invention by suitable control of diet. Thus this aspect provides a method of treatment of a human or animal for a disorder of one or more of the ninth or twelfth aspects of the invention comprising one of (i) total fasting of the individual and (ii) feeding the individual a ketogenic diet eg. of 60-80% lipid with carbohydrate content 20% or less by weight'.

Claim 23 claims:

'A method.... Wherein the ketones, acids or diols are provided by control of diet causing metabolic elevation of these compounds.'

Based on the above, it is clear that the subject matter of the present application is not anticipated by any of the cited references. Reconsideration and withdrawal of the outstanding anticipation rejections are accordingly respectfully requested.

The outstanding Action was discussed with the Examiner on May 23, 2008 and again on June 3, 2008. The Examiner advised that the way forward in response to the priority issue was by way of a petition, as outlined in the Action. The Examiner further indicated that such a petition would be considered at this stage. Based on those indications, the present Response is accompanied by a petition (and requisite fee authorization) to accept an unintentionally delayed benefit claim under 35 U.S.C. §119(e), 120, 121 and 365(c).

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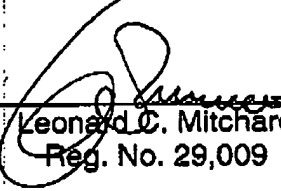
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Favorable action on the present response and petition are respectfully requested.

Respectfully submitted,

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